



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2003

Ms. Pamela Smith
Senior Assistant General Counsel
Department of Public Safety
P.O. Box 4087
Austin, Texas 78733-0001

OR2003-8882

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 195398.

The Department of Public Safety (the "department") received a request for the names and addresses of Bexar County residents who are facing suspension of their driver's licenses. You claim that the requested information is excepted from disclosure under sections 521.051 of the Transportation Code and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted sample of information.¹

We must first address the obligations of the department under section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You state that you received the request for information on November 5, 2003. However, the submitted documents indicate that the request was sent by e-mail to the department's officer for public information after business hours on November 3, 2003. Therefore, we presume that the department received the request on November 4, 2003. Because you have not accounted for this discrepancy and you did not request a decision from this office until November 20, 2003, we find that you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential under another source of law or that third party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Sections 521.051 of the Transportation Code and 552.130 of the Government Code provide compelling reasons to overcome the presumption of openness. Therefore, we will address the applicability of these exceptions to the requested information.

Section 521.051 of the Transportation Code provides that the department "may not disclose class-type listings from the basic driver's license file to any person" except in certain situations as set out in section 521.049(c) of the Transportation Code. In Open Records Decision No. 618 (1993), this office determined that the purpose of the statutory predecessor to section 521.051 "appears to be to relieve the department of the administrative burden of compiling a list based primarily on location and existence of traffic convictions, *i.e.*, a class type list, when the requestor does not have individual driver's license numbers or names."² *Id.* at 3. We agreed that the provision limits access when the requestor seeks license listings

²We noted in Open Records Decision No. 618 (1993) that while the statute restricts access to class listings, it does not make the information confidential by law under section 552.101 of the Government Code. *See id.* at 3 n.3.

by specific type, such as “a list of licensees who have traffic convictions on file, or a list of those who might be subject to administrative hearings to suspend their license.” *Id.*

The department contends that the requested information is a class-type listing that may not be provided to the requestor. Upon consideration of your arguments and review of the submitted information, we agree that section 521.051 is applicable to the information at issue. We note that section 521.049(c) provides that the department may make class-type listings available “to an official of the United States, the state, or a political subdivision of this state for governmental purposes only.” You state that section 521.049(c) is not applicable in this instance. Thus, pursuant to section 521.051, the department may not provide the requested information to the requestor. *See* Open Records Decision No. 618 at 4 (1993). As we are able to make this determination, we need not address the department’s claims under section 552.130 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Steven W. Bartels
Assistant Attorney General
Open Records Division

SWB/seg

Ref: ID# 195398

Enc. Submitted documents

c: Ms. Diana Minella
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(w/o enclosures)